

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF LOUISIANA

IN RE:

CASE NO. 99-10406

WEST DELTA OIL CO., INC.

SECTION "B"

Debtor

CHAPTER 11

REASONS FOR ORDER

This matter came on for hearing on April 5, 2006 as a motion to disgorge fees paid to the debtor's counsel filed by I.G. Petroleum, LLC ("I.G."). For the reasons given below, the motion of I.G. is granted and attorneys Michael A. Fenasci ("Fenasci") and Perrin C. Butler ("Butler") are ordered to disgorge the fees paid to them by I.G. on April 20, 2001 in full, plus prejudgment and post-judgment interest at the federal judgment rate, as found in 28 U.S.C. § 1961, from April 20, 2001 until paid.

I. Background Facts

Fenasci and Butler were employed as special counsel for the debtor, West Delta Oil Company, Inc., with respect to matters involving James Ingersoll, Jr., a shareholder of the debtor who had moved to dismiss the debtor's Chapter 11 filing. Thereafter, Fenasci was further authorized to represent the debtor with respect to certain designated matters relating to I.G. On July 28, 2000, this court confirmed a plan of reorganization sponsored by I.G. that among other things provided for payment of all of the debtor's administrative claims, including attorneys' fees. Prior to this, the court had set March 30, 2000 as the bar date for the filing of all administrative claims. On September 1, 2000, well after the bar date, Fenasci and Butler filed fee applications. In an order dated March 7, 2001, this court approved the fee applications in

part allowing payment for services rendered by Butler and Fenasci prior to March 30, 2000.¹

I.G.'s plan of reorganization provided that I.G. would pay the administrative fees of the estate at confirmation. Thus, on April 20, 2001, I.G. paid fees as ordered by this court: Butler was paid \$30,543.25, and Fenasci was paid \$42,540.27.² I.G. appealed the decision ordering payment of the fees to the district court, and after some procedural wrangling, the district court reversed and remanded the case for reconsideration of whether the untimely fee applications should be granted, and whether the role Butler and Fenasci had played with respect to their participation in Burrwood Oil created a conflict of interest.

This court ruled in an order and opinion dated October 7, 2003 that the untimely fee applications could be granted and found no conflict of interest sufficient to prevent Fenaci and Butler from representing the debtor as special counsel.³ I.G. appealed this ruling, and it was upheld by the district court. I.G. further appealed to the United States Court of Appeals for the Fifth Circuit, which reversed, finding that there was a conflict of interest under 11 U.S.C. §327(e) and Federal Rule of Bankruptcy Procedure 2014 and that the conflict precluded the award of attorney fees.⁴ Thereafter I.G. filed the motion for disgorgement and requested prejudgment interest dating back to April 20, 2001, the date I.G. paid the attorneys' fees to Butler and Fenasci.⁵

¹ (P-519).

² Motion to Disgorge Fees Paid to Debtor's Counsel (P-662) at Exhibit 1, Affidavit of Robert M. Hallmark.

³ (P-644).

⁴ *In the Matter of West Delta Oil Co., Inc.*, 432 F.3d 347 (5th Cir. 2005).

⁵ (P-662).

II. Legal Analysis

The court first orders the disgorgement of the fees paid to Fenasci and Butler in accordance with the Fifth Circuit's ruling. The question then is whether this is a situation in which an award of prejudgment interest is appropriate. I.G. cites one decision from the United States Court of Appeals for the Tenth Circuit that allowed prejudgment interest on the disgorgement of attorneys' fees.⁶ This court notes, however, that the disgorgement of attorneys' fees in that case, *Investment Bankers*, was ordered under §§547 and 548 of the Bankruptcy Code. Bankruptcy courts have often awarded prejudgment interest in the context of avoided transfers, specifically actions under §§ 547 and 548 of the Bankruptcy Code.⁷ In the instant case, however, I.G. was neither the trustee nor the debtor in possession bringing an action under §§547 or 548 of the Code. I.G. was the sponsor of the confirmed plan of reorganization, under which it assumed the payment of the administrative expenses incurred by the debtor during the course of its reorganization, seeking disgorgement of attorneys' fees it correctly contended were wrongfully paid to Fenasci and Butler. Thus, the court looks at the general reasons underlying awards of prejudgment interest to determine whether such an award is proper here.

Federal courts apply a two-step analysis to determine whether an award of prejudgment interest is within a court's discretion: (1) whether the federal act that creates the cause of action

⁶ *In re Investment Bankers, Inc.*, 4 F.3d 1556 (10th Cir. 1993).

⁷ See *Matter of Texas General Petroleum Corp.*, 52 F.3d 1330, 1339-40 (5th Cir. 1995); *In re International Administrative Services, Inc.*, 408 F.3d 689, 709 (11th Cir. 2005); *Matter of Milwaukee Cheese Wisconsin, Inc.*, 112 F.3d 845 (7th Cir. 1997); *In re Cybermech, Inc.*, 13 F.3d 818 (4th Cir. 1994); *In re Massan Shipping Industries, Inc.*, 272 B.R. 625 (E.D.La. 2001); *In re L&T Steel Fabricators, Inc.*, 102 B.R. 511 (Bankr.M.D.La. 1989); *In re Missionary Baptist Foundation of America, Inc.*, 69 B.R. 536 (Bankr.N.D.Tex. 1987).

precludes such an award; and (2) whether such an award furthers the congressional policies of the federal act.⁸ The Bankruptcy Code is silent with regard to prejudgment interest. In the absence of a statutory provision to the contrary, prejudgment interest may generally be awarded if 1) the award of prejudgment interest would serve to compensate the injured party, and 2) the award of prejudgment interest is otherwise equitable.⁹ Prejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgement is entered, thereby achieving full compensation for the injury those damages are intended to redress.¹⁰ Prejudgment interest is compensation for the use of funds; it is not to be awarded as a penalty against a defendant.¹¹ Further, prejudgment interest is not granted “according to a rigid theory of compensation withheld, but is given in response to considerations of fairness.”¹²

In the Eastern District of Louisiana, the award of prejudgment interest by a bankruptcy court for unpaid rent has been upheld.¹³ Prejudgment interest at the trial court’s discretion has

⁸ *Matter of Texas General Petroleum Corp.*, 52 F.3d 1330, 1339 (5th Cir. 1995).

⁹ *In re Investment Bankers, Inc.*, 4 F.3d 1556 (10th Cir. 1993).

¹⁰ *West Virginia v. United States*, 479 U.S. 305, 310 n.2, 107 S.Ct. 702, 93 L.Ed.2d 639 (1987).

¹¹ *Pegues v. Mississippi State Employment Service*, 899 F.2d 1449 (5th Cir. 1990); *see also Socony Mobil Oil Co., v. Texas Coastal & Intern., Inc.*, 559 F.2d 1008 (5th Cir. 1977) (district court’s denial of prejudgment interest award to plaintiff is reversed where defendants had the use of plaintiff’s money during the entire period of protracted litigation).

¹² *Whitfield v. Lindemann*, 853 F.2d 1298, 1306 (5th Cir. 1988), *quoting Blau v. Lehman*, 368 U.S. 403, 82 S.Ct. 451, 7 L.Ed.2d 403 (1962).

¹³ *My Favorite Year, Inc., v. Thomas Jefferson Construction, Corp.*, 1999 WL 64932 (E.D.La.).

also been awarded in the Fifth Circuit in Title VII and ERISA cases, as well as admiralty actions.¹⁴

In the case before the court, cause exists to justify an award of prejudgment interest in the court's discretion.¹⁵ The plaintiff, I.G., paid the attorneys' fees promptly when ordered to do so by the court. The defendants, Fenasci and Butler, have had the use of those funds for the entire time that the correctness of that order was on appeal, a period of almost five years.

Theoretically, the money controlled by the defendants and found owing, has produced during the period of this litigation an amount due as prejudgment interest.¹⁶

The next question, then, is at what rate shall the prejudgment interest accrue. The court notes that the Fifth Circuit has stated, "federal law governs the range of remedies, including the allowance and rate of prejudgment interest, where a cause of action, as in this case, arises out of federal statute."¹⁷ Further, an explanation of the court's reasons for its choice of rate is required for ease of appellate review.¹⁸ Here the court will apply the federal judgment rate for post-

¹⁴ *Thomas v. Texas Dept. Of Criminal Justice*, 297 F.3d 361 (5th Cir. 2002); *Pegues v. Mississippi State Employment Service*, 899 F.2d 1449 (5th Cir. 1990); *Whitfield v. Lindemann*, 853 F.2d 1298 (5th Cir. 1988); *Socony Mobil Oil Co., v. Texas Coastal & Intern., Inc.*, 559 F.2d 1008 (5th Cir. 1977).

¹⁵ *See Whitfield v. Lindemann*, 853 F.2d 1298, 1306 (5th Cir. 1988) (cursory manner in which district court awarded prejudgment interest made it difficult for appellate court to weigh the propriety of the district court's exercise of discretion).

¹⁶ Comment, Prejudgment Interest: Survey and Suggestion, 77 Nw.U.L.Rev. 192, 199 (1982).

¹⁷ *Carpenters Dist. Council of New Orleans & Vicinity v. Dillard Dept. Stores, Inc.*, 15 F.3d 1275 (5th Cir. 1994); *see also Guides, Ltd. v. Yarmouth Group Property Management, Inc.*, 295 F.3d 1065 (10th Cir. 2002).

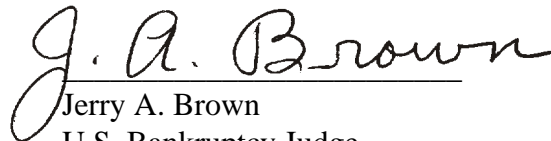
¹⁸ *Whitfield v. Lindemann*, 853 F.2d 1298, 1307 (5th Cir. 1988).

judgment awards found in 28 U.S.C. § 1961 because the court's jurisdiction was based on 28 U.S.C. § 1334, a federal statute.

III. Conclusion

For the reasons expressed above, the motion brought by I.G. to order disgorgement of attorneys' fees is granted. Additionally, the courts orders payment of prejudgment and post-judgment interest at the federal judicial rate, as found in 28 U.S.C. § 1961, from April 20, 2001 until paid.

New Orleans, Louisiana, July 27, 2006.


Jerry A. Brown
U.S. Bankruptcy Judge